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DAVID S. ROSENZWEIG  
E-mail: drosen@kwplaw.com

December 13, 2003

Mary L. Cottrell, Secretary  
Department of Telecommunication and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

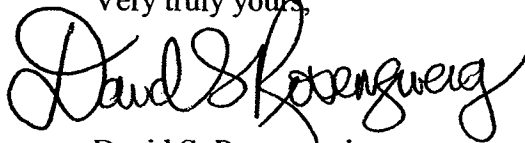
Re: Boston Edison Company, D.T.E. 03-112

Dear Secretary Cottrell:

Enclosed please find the responses of Boston Edison Company d/b/a NSTAR Electric ("Boston Edison" or the "Company") to the Attorney General's First Set of Information Requests in the above-referenced proceeding. Please also find a Motion for Protective Treatment of confidential information that is contained in these responses. The Company will file unredacted versions of its responses to the Attorney General's information requests under separate cover.

Thank you for your attention to this matter. Please contact me at your convenience if you have any questions relating to this filing.

Very truly yours,



David S. Rosenzweig

Enclosures

cc: Kevin Penders, Hearing Officer  
Joseph Tiernan, Electric Power Division  
Colleen McConnell, Assistant Attorney General  
Bryant K. Robinson  
Neven Rabadjija, Esq.  
Stephen J. Carroll  
Tam Ly

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Boston Edison Company  
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D.T.E. 03-112

**MOTION FOR PROTECTIVE TREATMENT  
OF CONFIDENTIAL INFORMATION**

Now comes Boston Edison Company d/b/a NSTAR Electric (the “Company” or “NSTAR Electric”) and hereby requests that the Department of Telecommunications and Energy (the “Department”) grant protection from public disclosure of certain confidential, sensitive and proprietary information submitted in this proceeding in accordance with G.L. c. 25, § 5D.

On this date, NSTAR Electric has submitted information to the Department and the Attorney General in response to the Attorney General’s First Set of Information Requests in this proceeding relating to bids received by the Company to acquire the Company’s land located off Vine and LaGrange Streets, principally in Newton, Massachusetts (the “Property”). Specifically, the following documents contain such bid-related information: Attachments AG-1-1(a) through (h); Attachments AG-1-2(a) and (b); Attachments AG-1-6(a) and (b); and the Company’s response to Information Request AG-1-7 (collectively, the “Bid-Related Documents”). In addition, the Company is submitting its brokerage agreement with Insignia/ESQ (the “Brokerage Agreement”) in response to Information Request AG-1-5. Both the Bid-Related Documents and the Brokerage Agreement are confidential, competitively sensitive and proprietary.

Accordingly, NSTAR Electric requests herein that such information be protected from public disclosure.

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

[T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officer's Ruling On the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

The Bid-Related Documents contain confidential, competitively sensitive and proprietary information relating to prices offered to NSTAR Electric to acquire the Property. This information should be protected from public disclosure to protect the Company's future negotiating position when seeking to sell distribution-related property in the competitive market. Moreover, to the extent that potential bidders for the Company's distribution property believe that their bids will be disclosed to the public, such bidders may decide not to participate in future Company auctions or offerings of its distribution property. Accordingly, if the Department allows bid-related information to

be disclosed to the public, such action could be detrimental to NSTAR Electric's customers, who stand to benefit from the Company's ability to maximize the price paid for its distribution assets through the solicitation of bids from numerous parties. Therefore, because the information in the Bid-Related Documents is confidential, competitively sensitive and proprietary, NSTAR Electric requests that such information be protected from public disclosure.

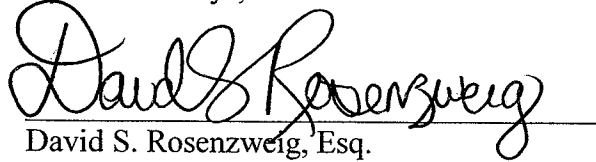
The Brokerage Agreement is also confidential, competitively sensitive and proprietary. The Brokerage Agreement includes terms agreed upon between the Company and a private broker, Insignia/ESG, to market the Property for sale. To the extent that the terms of the Brokerage Agreement are allowed to be released publicly, the Company's future bargaining position with real estate brokers will be compromised if brokers interpret the Brokerage Agreement as a benchmark by which to negotiate other agreements. Accordingly, the Company's ability to negotiate the most favorable terms for such agreements in the future may be hampered should the terms of the Brokerage Agreement be released to the public. Therefore, because the Brokerage Agreement is confidential, competitively sensitive and proprietary, the Company requests that it be protected from public disclosure.

**WHEREFORE**, for the reasons stated above, the Company requests that the Department grant its motion to protect from public disclosure confidential, competitively sensitive and proprietary information contained in the Bid-Related Documents and Brokerage Agreement as referenced herein.

Respectfully submitted,

**BOSTON EDISON COMPANY**

By Its Attorneys,

A handwritten signature in cursive script, reading "David S. Rosenzweig", written over a horizontal line.

David S. Rosenzweig, Esq.

John K. Habib, Esq.

Keegan, Werlin & Pabian, LLP

265 Franklin Street, 6<sup>th</sup> Floor

Boston, MA 02110

Telephone: (617) 951-1400

Telecopier: (617) 951-1354

Dated: December 13, 2003

Information Request AG-1-1

Please provide copies of all the offers to purchase the Company's land located off Vine and LaGrange Streets, principally in Newton, Massachusetts, (the "Property") that were submitted on or before June 20, 2003.

Response

**CONFIDENTIAL MATERIAL ATTACHED**

On June 20, 2003, Boston Edison Company (the "Company") received eight (8) offers to purchase the Property. Attached hereto are copies of all of the offers to purchase the Property (Attachments AG-1-1(a) through (h)).

Please note that the attached materials are marked as PROTECTED MATERIALS and they contain confidential, sensitive and proprietary bid-related information, and the Company is seeking Department approval for the protection from public disclosure of such materials in accordance with G.L. c. 25, § 5D. The materials will be provided to the Attorney General upon the execution of a non-disclosure agreement, signed by the Company and the Attorney General.

Information Request AG-1-2

Please provide copies of all the offers to purchase the Property that were submitted during the second round of bidding. If those offers were submitted orally, please provide a detailed history of those offers.

Response

**CONFIDENTIAL MATERIAL ATTACHED**

For the second round of bidding, the Company received two (2) offers to purchase the Property, attached hereto as Attachments AG-1-2(a) and (b). Each offer was submitted in writing.

Please note that the attached materials are marked as PROTECTED MATERIALS and they contain confidential, sensitive and proprietary bid-related information, and the Company is seeking Department approval for the protection from public disclosure of such materials in accordance with G.L. c. 25, § 5D. The materials will be provided to the Attorney General upon the execution of a non-disclosure agreement, signed by the Company and the Attorney General.

Information Request AG-1-3

Please provide a copy of all analyses of the value of the Property created by and for the Company both formally and informally.

Response

The Company had no formal appraisals done on the Property. The Company's broker, Insignia/ESG, prepared a rough Opinion of Value of the potential value of the property, assuming certain conditions were met. Please find attached a copy of Insignia/ESG's letter dated November 15, 2000 (Attachment AG-1-3 (a)). This opinion was based on the assumption that a 68-lot residential property subdivision could be permitted, approved and built on the Property. In addition, Insignia/ESG provided further analysis detailed in a memorandum dated January 4, 2001 (Attachment AG-1-3 (b)). This analysis assumed a 64-lot residential subdivision.



Insignia/ESG, Inc.  
Real Estate  
One Financial Center  
Boston, MA 02111  
Tel: 617/348-3800  
Fax: 617/348-3894  
www.insigniaesg.com

Attachment AG-1-3(a)

November 15, 2000

Mr. Joseph L. Simonelli  
NSTAR  
800 Boylston Street  
Mail Stop P.1604  
Boston, MA 02199



RE: LaGrange and Vine Street, Newton, Massachusetts/ Opinion of Value

Dear Joe:

Pursuant to your request regarding our Opinion of Value for the LaGrange and Vine Street parcels, we reviewed our earlier files and reviewed recent nearby residential home sales. Raw land generally represents 25% to 40% of the total sale price of a residential home. Many nearby homes have sold recently in the \$900,000 to \$1,400,000 range. Given a 68 Lot subdivision, as earlier contemplated, we believe that the value of the entire property can attain a per-lot price of \$300,000 to \$375,000. This is predicated upon no detrimental zoning changes since the 1997 valuation as well as no other major impediments to the proposed subdivision plan as prepared by Beals Associates, Conceptual Development Plan A, that defines 68 building lots that range in size from 10,000 SF to 38,000 SF.

Given an average value of \$325,000 per building lot, the property value, to a developer, is \$22,100,000.00. This value would be reduced to reflect the construction of approximately 2500 lineal feet of new roadway that would cost a developer \$500 per foot to construct. Additionally, utility hookups and soft costs combined with the roadway costs could total \$2,000,000.00. The developer would further reduce the purchase price due to the "hold period". This represents the time required in the disposition in the sites, i.e. the cost to carry. After subtracting the development costs and hold costs, our Opinion of Value for LaGrange and Vine Street sold as either a single purchase of the 42 acres or a spit purchase of the North and South can attain a value of \$18,600,000.00. This is based upon a subdivision of 68 lots.

Respecting the increase of value over time, this property was valued at \$9.5 million dollars in 1997, \$12 - \$14 million dollars in 1998 - 1999 and now represents a value of \$18.6 million.

Enclosed for your review is the September 11, 1997 Site Development Report, Concept Plan A and B, and the Preliminary Plan for Subdivision.

Upon your direction, we are prepared to implement an action plan, which could, among other things, initiate the subdivision plan and the marketing of the subject property.

Please advise as to the desired course of action.

Sincerely,

  
Arthur M. Agnew III

enclosures

## MEMORANDUM

To: Don Anastasia - NSTAR

From: Trey Agnew & Patrick Cavanagh

Date: January 4, 2001

Re: *LaGrange and Vine Streets, Newton, MA*



Our focus to date regarding the analysis of the approximately 42 acres of land on LaGrange and Vine Streets in Newton has been predominately single family, however, the marketing process may generate interest from other uses such as:

- Multi-family apartment development
- Mixed development
- Continuing Care Retirement Communities

The value for these other development scenarios might result in a significantly higher sale value depending on the type of development and the density Newton would allow to be permitted. These strategies bring market risk and regulatory risk.

### Single Family Subdivision Analysis:

Based on the subdivision analysis developed by Beals Associates, Inc., a copy of which is attached for review, the cash flow projection for the sale of the 64 lots for single-family homes generally reflects what we feel is the following Net Present Value (NPV) from a developers perspective.

	Year 1	Year 2	Year 3	Total
Total Property Net Proceeds	\$7,033,900	\$6,574,450	\$6,641,060	\$20,249,410
Less Developers Profit - 10%	\$703,390	\$657,445	\$664,106	\$2,024,941
Total Net Proceeds	\$6,330,510	\$5,917,005	\$5,976,954	\$18,224,469
NPV @ 9%	\$15,403,337 \$15,000,000/ \$234,375/ lot			

Based on the per lot sale assumptions and the development expenses associated with a multi-phase single family subdivision sell-off, the current market value based upon the net present value (NPV) is approximately \$15,000,000, or \$235,000 per proposed lot.

The value could change slightly if one or more of the assumptions are changed, such as a reduced marketing period of less than 36 months. Also, the marketing cost estimate could be a lower fixed number depending on the strategy of the developer and the marketing effort preferred by the developer.

The following is a list of regional and national qualified and capable residential developers who are true prospects:

**Regional:**

* Archstone Communities	* Avalon Bay Communities
* Cathartes Investments	* Claremont Companies, Inc.
* Corcoran Companies	* Finger Companies
* Green Companies	* Meritage Corp.
* Modern Continental	* Princeton Properties

**National:**

* Pulte Corp.	* Kaufman and Broad Home Corp.
* D.R. Horton	* Centex Corp.
* Lennar Corp.	* The Ryland Group
* NVR	* U.S. Home Corp.
* Beazer Homes USA	* Del Webb Corp.

Attached please find the Builder 100 List that provides a comprehensive summary of recognized residential builders and developers. Upon your direction we will provide you with a more detailed overview of these buyers at the appropriate time.

# BEALS ASSOCIATES INC.

31 STATE STREET  
BOSTON  
MASSACHUSETTS  
02109-2705  
617 742-3554  
FAX: 742-0310

## NSTAR - Newton Property Comparative Analysis 64 Lots Total Revised 1.02.00

### Conventional Subdivision

#### Newton Property

"A" Lot Sale Price  
# of Lots Sold  
"A" Lot Sale Price  
# of Lots Sold  
Total # of "A" Lots Sold  
Total Amount "A" Lots Sold

"B" Lot Sale Price  
# of Lots Sold  
"B" Lot Sale Price  
# of Lots Sold  
Total # of "B" Lots Sold  
Total Amount "B" Lots Sold

"C" Lot Sale Price  
# of Lots Sold  
"C" Lot Sale Price  
# of Lots Sold  
Total # "C" Lots Sold  
Total Amount "C" Lots Sold

Total Newton Property Lots Sold  
Total Newton Property Gross Revenue

#### Newton Property Project Expenses

Roadway Improvements (2550 LF)  
Marketing Costs (3%)  
Engineering Fees (\$2,000 per lot)  
Property Taxes (\$3,500 per lot)

Total Newton Property Project Costs

Total Newton Property Net Proceeds

YR 1	YR 2	YR 3	TOTAL
340,000	365,000	384,000	
4	9	9	22
365,000			6
6			28
3,550,000	3,285,000	3,456,000	10,291,000
320,000	350,000	368,000	
4	9	9	22
350,000			6
6			28
3,380,000	3,150,000	3,312,000	9,842,000
290,000	300,000	315,000	
1	3	2	6
300,000			2
2			8
890,000	900,000	630,000	2,420,000

23	21	20	64
7,820,000	7,335,000	7,398,000	22,553,000
425,000	425,000	425,000	1,275,000
234,600	220,050	221,940	676,590
46,000	42,000	40,000	128,000
80,500	73,500	70,000	224,000
786,100	760,550	756,940	2,303,590
7,033,900	6,574,450	6,641,060	20,249,410

Information Request AG-1-4

Please provide copies of all the proposals from real estate agents to sell the Property.

Response

The Company entered into a brokerage agreement with Insignia/ESG on November 10, 2000 for the sale of the Property. Please refer to Attachment AG-1-5 for a copy of the agreement. The Company received no other offers to sell the Property from other real estate agents or brokers.

Boston Edison Company d/b/a NSTAR Electric  
Department of Telecommunications and Energy

D.T.E. 03-112

Information Request: **AG-1-5**

December 13, 2003

Person Responsible: Bryant K. Robinson

Page 1 of 1

Information Request AG-1-5

Please provide copies of the services agreement with Insignia / ESG, Inc. for the sale of the Property.

Response

**CONFIDENTIAL MATERIAL ATTACHED**

Attached hereto is a copy of the November 10, 2000 brokerage agreement between Boston Edison Company and Insignia/ESG (Attachment AG-1-5).

Information Request AG-1-6

Please provide copies of all of the analyses of the offers.

Response

**CONFIDENTIAL MATERIAL ATTACHED**

Attached please find a copy of two spreadsheets that depict all offers received for the first round of bidding, which were received on June 20, 2003, and the second round of bidding, received on August 8, 2003 (Attachments AG-1-6 (a) and (b), respectively). These spreadsheets were used to analyze both the first and second round of bids.

Please note that the attached materials are marked as PROTECTED MATERIALS and they contain confidential, sensitive and proprietary bid-related information, and the Company is seeking Department approval for the protection from public disclosure of such materials in accordance with G.L. c. 25, § 5D. The materials will be provided to the Attorney General upon the execution of a non-disclosure agreement, signed by the Company and the Attorney General.

Information Request AG-1-7

Please indicate whether any of the "non-conforming" bids were considered. If so, please explain why each "non-conforming" bid was rejected.

Response

**REDACTED RESPONSE**

**PROTECTED MATERIALS**

As explained to the prospective bidders in the Offering Memorandum for the sale of the Property, only conforming bids would be eligible for consideration. Non-conforming bids were not considered by the Company for acceptance.

In the first round of bidding, four (4) bids were deemed non-conforming for the reasons noted below:

- 1) [REDACTED] bid [REDACTED]. However, its bid was conditioned on a "satisfactory review of due diligence" as a condition to closing. Also, its proposed [REDACTED] deposit was neither equal to 10% of the purchase price (as stipulated in the Offering Memorandum), nor submitted with its offer. In addition, [REDACTED] submitted its offer on its own letterhead, instead of on the Company's bid form, as required by the Offering Memorandum.
- 2) [REDACTED] bid [REDACTED]. However, its bid was conditional because its bid form was physically altered by crossing out the phrase "In submitting this bid, we agree to be bound by the terms and condition of sale outlined in the Offering Memorandum", and typing in, "subject to a mutually acceptable Purchase and Sale Agreement". Moreover, [REDACTED] did not agree to accept the terms of the offering and the form of purchase and sale agreement attached to the Offering Memorandum.
- 3) [REDACTED] bid [REDACTED]. However, its bid was conditioned on receipt of permits, i.e., the bid was "subject to approvals for a 40B Comprehensive Permit for 135 condos." Also, [REDACTED] did not complete the Company's bid form, as required.



- 4) [REDACTED] proposed to develop, construct and manage a public cemetery and mausoleum on the Property site through a 50-year lease agreement with the Company. [REDACTED] bid was presented to the Company as having a net present value of approximately [REDACTED], which was the net present value of [REDACTED] proposed lease payments over 50 years. This estimate of net present value was based on a 6 percent discount rate, assumed by [REDACTED] (see Attachment AG 1-1(h) **CONFIDENTIAL**).<sup>1</sup> Because [REDACTED] proposed that the Company retain ownership of the Property (the terms of which were not disclosed by [REDACTED]), and the full value of the bid would not realized by the Company upon closing, the bid was non-conforming.

Please note that this response is marked as PROTECTED MATERIALS because it contains confidential, sensitive and proprietary bid-related information, and the Company is seeking Department approval for the protection from public disclosure of such materials in accordance with G.L. c. 25, § 5D. The materials will be provided to the Attorney General upon the execution of a non-disclosure agreement, signed by the Company and the Attorney General.

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<sup>1</sup> If a transition cost carrying charge rate of 10.88 percent were applied to [REDACTED] bid to determine its net present value, [REDACTED] bid would have a net present value of approximately [REDACTED].

Information Request AG-1-8

Please itemize and quantify the "Other Sales Costs" that appear on Exhibit NSTAR-BKR-4.

Response

Other Sales Costs include the following expenses to date to prepare the Property for disposition:

	<u>Expenses incurred to date</u>
Environmental Insurance Policy:	\$10,000
Engineering reports, studies, plans:	\$80,000
Environmental studies and reports:	\$5,000
Outside Legal Counsel:	<u>\$100,000</u>
	\$195,000

Please note that these expenses will be reconciled and be subject to true up based upon final, actual expenses in the course of the Company's annual transition cost reconciliation proceeding.